MINUTES OF THE 35TH INTERGOVERNMENTAL MEETING (FOR CONSIDERATION OF A LEGALLY-BINDING INSTRUMENT FOR THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM)

La Jolla, California, USA

February 2-7, 1998

Agenda Items 1 and 2. Opening of the meeting and election of the Chairman

The 35th Intergovernmental Meeting (IGM) was opened by the Chairman, Dr. Michael Tillman of the United States, at 9:50 a.m. on February 2, 1998. The attendees are listed in Annex 1.

Background concerning the fishery

At the request of the Chairman, Dr. Joseph reviewed developments in the surface fishery for tunas in the eastern Pacific Ocean (EPO) in recent years. In the late 1970s the capacity of the surface fleet reached 170,000 metric tons, and during the subsequent period the stock of yellowfin tuna was overfished. A combination of circumstances then led to a reduction of the fleet capacity to about 100,000 metric tons by the early 1990s. The capacity of the fleet is once again growing, and while the productive capacity of the stock is more or less in keeping with the fleet size, the catch of yellowfin tuna in 1997 exceeded a lower limit set by the IATTC.

The catches of skipjack have been much more variable than those of yellowfin, varying from 40,000 to nearly 200,000 metric tons since 1970. These catches do not appear to have had an impact on the subsequent abundance of skipjack in the EPO.

Dr. Joseph said there is special concern about bigeye tuna. Purse-seine catches of this species had increased over the last four years from very low levels to 52,000 metric tons. If the natural mortality rate of the species is low, these catches will overexploit the stock. The IATTC had established a working group of experts, which will make recommendations at the next IATTC meeting on measures that could be used to limit the catches of small bigeye tuna.

Bluefin tuna are taken in the northern parts of the EPO. Spawning takes place near Japan, and some of the juveniles then transit the Pacific Ocean to North America. The catches in the EPO are quite variable.

Dr. Joseph noted that recent increases in the fishing fleet's capacity have been accompanied by an increase in fishing for tuna in association with floating objects. This technique tends to catch skipjack and smaller yellowfin and bigeye tunas. He referred to a memo he had sent to IATTC Commissioners and other governments (Annex 2), which expressed the view that the issues of yellowfin tuna conservation and increasing fleet capacity were matters for concern which should be discussed when the IATTC met.

Agenda Item 3. Adoption of Agenda

The provisional agenda was approved without change. It is attached as Annex 3.

Agenda Item 4. Consideration of a legally-binding instrument for the IDCP

The Chairman said that he intended to follow the process used at the previous meeting of employing a drafting group and *ad hoc* contact groups during the meeting, and that he would like to keep the meeting open to observers as much as possible.

He then invited opening statements from government delegations and from observers from intergovernmental organizations and non-governmental organizations (NGOs). Earth Island Institute asked that their comments on the draft Agreement, made in a letter addressed to the U.S. Department of State, be included in the minutes of the meeting, and the representative of Greenpeace made a statement and asked that a letter Greenpeace had sent to the governments also be included in the minutes (Annexes 4 and 5).

The Chairman then asked whether delegations would prefer to work from the text distributed by the Secretariat immediately after the last IGM, showing the work of the drafting committee, heads of delegations, and other groups, or from a simpler text which included all the agreed changes. The delegations chose to work from the latter.

In respect of Article IV, the US representative noted that while the language from the Declaration of Panama concerning measures based on the best scientific evidence accounting for "natural variation, recruitment rate, natural mortality rate, population growth rate, individual growth rate, population parameters K and r, and scientific uncertainty" might not appear in the legally binding instrument, it was his understanding that these concepts would be taken into account in the evaluation of scientific evidence.

With regard to paragraph 1 of Article IV, the representative of Japan stated that, while Japan is fully aware that the pertinent part of this paragraph mirrors the wording used in the Panama Declaration, maintaining or restoring the biomass of both target species and associated stocks at or above levels capable of producing maximum sustainable yield (MSY) is not only impracticable in terms of both theory and reality, but also deviates from the internationally recognized standard, *i.e.* maintaining or restoring target species at MSY level while maintaining or restoring associated stocks above levels at which their reproduction may become seriously threatened. The wording in the text might be interpreted in such a way as to close the fishery unreasonably simply because those associated species taken incidentally in that fishery are below MSY level. For these reasons, Japan cannot associate itself with the concept, although it would not stand in the way of consensus.

With regard to paragraph 5 of Annex X of the Agreement (Guidelines and Criteria for the Participation of Observers at Meetings of the Parties), the representative of Japan continued that Japan does not see any need to change the current procedure employed in IATTC-related meetings, *i.e.* any Party may object to the participation of a particular NGO. However, it will not block the consensus toward other rules, *e.g.* the requirement that objection from a majority of the Parties be necessary to block the participation of a particular NGO, provided that this new rule should not be considered in any way as a precedent which Japan is expected to follow in other fora, including IATTC meetings.

With respect to Article XVIII, Dr. Joseph said that, notwithstanding this Article, the IATTC staff would continue to apply the IATTC's existing rules of confidentiality. Any detailed information concerning the activities of vessels held by the staff would be disclosed only with the permission of the owner and captain involved.

The text of the Agreement was accepted at 3:30 a.m. on February 7.

The representative of Mexico asked that his nation's proposal for Annex III of the Agreement concerning per-stock, per-year dolphin mortality caps, be included in the minutes (Annex 6), and also the preamble to Mexico's proposal for Annex IV on the allocation and distribution of Dolphin Mortality Limits (DMLs) (Annex 7).

The representative of the United States of America made a statement (Annex 8) concerning the objectives expressed in Article IV, paragraph 1, of the Agreement. The representative of Mexico said that his delegation wished to be associated with that statement.

Agenda Item 5. Other business

a. Adoption of the Agreement on the International Dolphin Conservation Program

The meeting resolved to adopt the Agreement (Annex 9). The representative of Japan made a statement (Annex 10) concerning Japan's participation in the consensus to adopt this resolution.

b. Strengthening and reform of the Inter-American Tropical Tuna Commission

The meeting adopted a resolution asking the IATTC to set up a working group to make recommendations on amendments and reforms to the IATTC Convention (Annex 11).

The representative of Japan made a statement (Annex 12) regretting that this subject was brought up at the end of the IGM without his delegation being given an opportunity to consult with its government.

Agenda Item 6. Adjournment

The meeting adjourned at 4:15 a.m. on February 7, 1998.

Annex 1.

35th INTERGOVERNMENTAL MEETING ON THE CONSERVATION OF TUNAS AND DOLPHINS IN THE EASTERN PACIFIC OCEAN

35ª REUNION INTERGUBERNAMENTAL SOBRE LA CONSERVACION DE ATUNES Y DELFINES EN EL OCEANO PACIFICO ORIENTAL

La Jolla, California, USA
February 2-6, 1998 - Febrero 2-6, 1998

ATTENDEES - ASISTENTES

BELIZE-BELICE

NOEL JACOBS
Ministry of Agriculture and Fisheries

RICHARD E. HAAS
IMMARBE

COLOMBIA

FERNANDO PEREIRA V.
Ministerio de Agricultura y Desarrollo Rural

FERNANDO REY
Instituto Nacional de Pesca y Acuicultura (INPA)

RAUL TORRES
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CARLOS ACEVEDO
Ministerio de Comercio Exterior

ALFONSO PAZ
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JORGE CAMPOS M.
HEINER MENDEZ B.
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JAIME BASADRE A.
Asesor

ECUADOR

NANCY CELY I.
LUIS TORRES
Ministerio de Comercio Exterior, Industrialización y Pesca

JOFFRE CAMPAÑA MORA
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ESTANISLAO GARAVILLA
Conservas Isabel, S.A.

EL SALVADOR

ANA ELIZABETH VILLALTA VIZCARRA
SANDRA PEÑA DE VILLARAN
Ministerio de Relaciones Exteriores

ESPAÑA-SPAIN

LUIS MARIA ESTERUELAS
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CARLOS DOMINGUEZ DIAZ
CARLOS LARRAÑAGA GES
Secretaría General de Pesca

IGNACIO LACHAGA BENGOECHEA
JULIO MORON AYALA
OPAGAC

EUROPEAN UNION-UNIÓN EUROPEA

SERGE BESLIER

MANOS PAPAIOANNOU

FRANCE-FRANCIA

JEAN-PIERRE PARIS
Honorary Consul

JAPAN-JAPON

ICHIRO NOMURA
SINYA UNO
Fisheries Agency

SHINGO OTA
Embassy of Japan

EIKO OZAKI
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MEXICO

CARLOS CAMACHO G.
ANTONIO DIAZ DE LEON
MARA MURILLO C.
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JERONIMO RAMOS P.
GUILLERMO COMPEAN J.
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ERICK PARRA CORREA
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Secretaría de Medio Ambiente, Recursos Naturales y Pesca

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CANAINPES

GERARDO LOJERO
COMEXTUN

JOSE J. VELAZQUEZ C.
JOSE J. VELAZQUEZ C., Jr.
Supremos del Golfo y del Pacífico, S.A. de C.V.

BRUNO DUARTE J.
Pesquera Buena Esperanza, S.A. de C.V.

MARK ROBERTSON
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PANAMA

ARNULFO FRANCO
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UNITED STATES-ESTADOS UNIDOS

BRIAN HALLMAN
WILLIAM GIBBONS-FLY
VIOLANDA BOTET
U.S. Department of State

MICHAEL TILLMAN
WILLIAM HOGARTH
J. ALLISON ROUTT
WANDA CAIN
National Marine Fisheries Service (NMFS)

MARTIN HOCHMAN
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PRUDENCE FOX
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U.S. Department of Commerce -NOAA

SLOAN RAPPOPORT
U.S. Senate

BARBARA BRITTEN

JAMES McCARTHY

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U.S. Tuna Foundation

PETER FLOURNOY
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HUGO ALSINA LAGOS
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LORENZO RAVAGO
FENAPESCA

RAUL ROMERO
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INTERNATIONAL ORGANIZATIONS-ORGANIZACIONES INTERNACIONALES

CARLOS MAZAL
Organización Latinoamericana de Desarrollo Pesquero (OLDEPESCA)

NON-GOVERNMENTAL ORGANIZATIONS-ORGANIZACIONES NO GUBERNAMENTALES

NINA YOUNG
Center for Marine Conservation

MARK PALMER
Earth Island Institute

TERESA PLATT
The Fishermen's Coalition

HÉCTOR LÓPEZ
Fundación para la Defensa de la Naturaleza

MARY MARKUS

GERALD LEAPE
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LEESTEFFY JENKINS
CRISTOBEL BLOCK
ALVARO POSADA-SALAZAR
Humane Society

KATHLEEN O'CONNELL
Whale and Dolphin Conservation Society

SCOTT BURNS
World Wildlife Fund

Annex 2.

January 5, 1998
Ref: 0003-430

To: All Commissioners

From: Director

Subject: Discussion of fleet size and yellowfin conservation at the meeting in February 1998

As you no doubt recall, I have in recent years often stated, notably at IATTC and Intergovernmental Meetings, that the stock of yellowfin tuna in the eastern Pacific Ocean (EPO) is healthy and is capable of producing maximum yields on a sustained basis, and that the size of the fleet exploiting the stock is in balance with the ability of the stock to sustain high per-vessel yields. However, I have also sought to emphasize the potential consequences of allowing the fleet capacity and/or the fishing effort to increase much beyond current levels, since increases in fleet capacity may well make it necessary to limit fishing effort, and the resulting catch of yellowfin, in order to prevent overexploitation of the stock.

During the late 1970s and early 1980s the average carrying capacity of the fleet operating in the EPO grew to nearly double its recent size, effort increased to nearly twice current levels, the average size of the fish in the catch dropped to nearly half the size currently harvested in the fishery, and both total abundance and catch declined sharply. During the early 1980s, when the stock of yellowfin was overexploited, annual catches from the EPO averaged about 140,000 metric tons (MT), compared to their current level of about 250,000 MT.

The international fleet operating in the EPO has been growing, from about 100,000 MT of carrying capacity in 1992-1993 to about 127,000 MT at present, and it seems likely that this trend will continue.

The issues of yellowfin tuna conservation and increasing fishing capacity are matters for concern, and I would therefore like to suggest that the IATTC meet to discuss them during the IGM scheduled for early February to negotiate a new dolphin conservation agreement. My memorandum of November 18 regarding the IGM mentioned the possibility of convening a special IATTC meeting to discuss the Commission's role in administering the dolphin conservation program established by the new agreement, and that meeting would perhaps be an opportune moment to also discuss these two other issues.

In view of the short time available, unless I hear from you to the contrary I will assume that you have no objection to the member governments of the Commission, and non-member governments with fleets operating in the EPO, getting together at the time of the IGM to discuss the important and pressing issues outlined above.

CC: Director, INPA, Colombia
Undersecretary for Fisheries, Mexico

Annex 3.

35th INTERGOVERNMENTAL MEETING

February 2-6, 1998

LA JOLLA, CALIFORNIA, USA

AGENDA

1. Opening of the meeting
2. Election of Chairman
3. Adoption of the Agenda
4. Consideration of a legally binding instrument for the IDCP
5. Other business
6. Adjournment

Annex 4.

LETTER FROM EARTH ISLAND INSTITUTE

January 30, 1998

Mr. Brian Hallman
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

RE: Comments on Draft Resolution of the IATTC Regarding the Agreement on the International Dolphin Conservation Program (Draft from Oct. 16th State Dept.)

Dear Mr. Hallman:

Earth Island Institute offers the following comments with regard to the U.S. State Dept's draft "Resolution of the IATTC Regarding the Agreement on the International Dolphin Conservation Program" and draft "Agreement" (draft dated Oct. 16, 1997):

- While the draft resolution calls upon nations to become members of the IATTC and participate in the International Dolphin Conservation Program (IDCP), nowhere does the draft agreement require "equitable payments" or mandate that nations meet "all financial obligations" to fund the IATTC activities (Section 4(a) of Public Law 105-42). Currently, the U.S. pays more than 90% of the expenses of the IATTC, although less than 5% of the fish from the ETP are harvested by U.S. vessels. This violates the original charter of the IATTC and is inconsistent with obligations under PL 105-42. The draft IATTC resolution should reflect the equitable payment language of PL 105-42. Nations that do not join the IATTC or that do not pay their equitable dues to the IATTC should be denied Dolphin Mortality Limits (DML's) for their fishing fleet.
- Furthermore, it is our view that if a nation does not fully join the IATTC (not simply its observer program) or joins but does not make "equitable payments" to the IATTC, the Commerce Department cannot lawfully allow that nation to import tuna to the U.S. Our belief is that imports under these circumstances would be a violation of PL 105-42 and would undermine the effectiveness of the IDCP.
- In our view, Annex II presents an unacceptable trading regime for dolphin mortality limits (DML's) among vessels, which would ensure vessels which kill large numbers of dolphins are rewarded and which would erode any incentive to further reduce dolphin mortality. We believe this draft Annex is in violation of the provisions of PL 105-42 that seek a goal of zero dolphin mortality. We strongly urge the inclusion of a mechanism in the resolution/agreement to annually reduce the DML's by a statistically significant amount, in keeping with the stated goals of the Agreement.
- While the draft resolution's section on "General Measures" mentions bycatch and the most recent draft adds provisions (Article V) on Reduction of Bycatch, the specific steps outlined in PL 105-42 (Section 15) are not included. Clearly, the draft should reflect the language from PL 105-42 to require specific steps by nations to reduce bycatch. We support the inclusion of the provision to release sea turtles and other endangered species alive, but specific steps to reduce bycatch of nontarget species and juvenile tuna should be included. We further recommend such steps include language to annually reduce bycatch by statistically significant amounts.
- The section of the draft Agreement on the IDCP (Article IV, Section 3) requires at least 50% of the observers on board a nation's fleet to be from the observer program of the IATTC. We strongly urge

that 100% of the observers be from the IATTC observer program, to maintain standard observations, increase transparency, speed transfer of data, and assure compliance.

- The section of the draft resolution/agreement on compliance (Article VII) is vague. This section needs to specify that nations must have effective laws in place and take specific enforcement actions to ensure vessels within their jurisdiction comply with the IDCP. Furthermore, the individual nation compliance measures should comport with the recommended fines, forfeitures, and license suspensions recommended by the IATTC's International Review Panel for infractions (Annex VII). Absent a nation acting to implement and enforce the provisions of the resolution/agreement, we believe it would be unlawful for the Department of Commerce to allow importation of that country's tuna into the U.S.
- Annex I states that the per-year overall dolphin mortality shall not exceed 5,000 total. However, the next sentence specifies a mortality cap of 0.1 percent of Nmin after the year 2001, which has been estimated at greater than 5,000 dolphins per year. This disparity should be eliminated, specifying that the 5,000 total cap, and mandate for continued reduction, must be continued past 2001.
- Annex V deals with tuna tracking and verification. We strongly support provisions for international inspection of tuna processing canneries and other facilities to ensure the dolphin-safe status of tuna. We feel that the resolution/agreement should stipulate that no nation allow landing or transshipment of tuna from non-parties through that member nation's ports of entry.

Thank you for the opportunity to review the draft resolution. We strongly urge you to incorporate our concerns in your negotiations on the implementation of PL 105-42 to ensure protection for dolphins and marine ecosystems.

Sincerely yours,

David Phillips, Director

Mark J. Palmer, Program Associate

cc Dr. Michael Tillman, NOAA
Dr. James Joseph, IATTC
Senator Barbara Boxer
Senator Joseph Biden
Senator John Kerry
Senator Ernst Hollings
Representative George Miller

Annex 5.

STATEMENT OF GREENPEACE

My name is Gerald Leape, and on behalf of Greenpeace, we want to congratulate you on the progress made at the last meeting toward concluding the negotiations necessary to complete the binding legal instrument committed to by all the intergovernmental parties under the Panama Declaration. With five days in front of us, we feel that there is a tremendous opportunity to complete the necessary work and have an agreement at the end of the week of which we can all be proud. In order for us to be fully satisfied with this agreement, it must contain operable measures to achieve all three of its stated objectives. Sadly, as the negotiations begin this week, this agreement is lacking in that respect.

To date, there is no mechanism within the negotiated text to achieve the first of the program's three primary objectives, "... to progressively reduce incidental dolphin mortalities in the tuna purse seine fishery in the Agreement Area to levels approaching zero, through the setting of annual limits ..." Toward that

end, Greenpeace circulated, in advance of the meeting, a document that suggests, among other elements, mechanisms to achieve that objective. Failure to include any of these mechanisms will necessitate a continual revisiting of this program to ensure that it is achieving one of its stated primary goals: to reduce dolphin deaths to levels approaching zero.

For those of you who do not have copies of our document, please see me at the lunch break. I ask that the full text of our lobby document be included in the minutes of the meeting following this opening statement.

LETTER FROM GREENPEACE

2 February 1998

To: Governments of Belize, Colombia, Costa Rica, Ecuador, El Salvador, France, Japan, Mexico, Netherlands Antilles, Panama, Spain, Taiwan, Republic of China, USA, Vanuatu, Venezuela,

From: Greenpeace International (Clifton Curtis, Traci Romine/consultant) Greenpeace U.S. (Gerald Leape) Greenpeace Mexico (Monique Mitastein) Greenpeace Central America (Lorenzo Cardenal)

Su: Intergovernmental Meeting (2-6 February 1998) on Tuna-Dolphin Agreement

With the second intergovernmental meeting scheduled to begin in less than two weeks in La Jolla, California, Greenpeace would greatly appreciate your government's serious consideration of our proposals on eight issues that are deserving of special attention. For that purpose, attached is a two-page statement prepared by Greenpeace, "Legally Binding Agreement: 8 Key Issues Facing the Intergovernmental Meeting." While we believe all eight issues are important, we are especially concerned that the current draft agreement contains insufficient measures, consistent with the objectives of the 1992 La Jolla Agreement and the 1995 Panama Declaration, to ensure continuing reductions in dolphin mortalities. The proposals presented in the 2nd and 3rd points of the attached statement reflect our strong belief that concrete mechanisms, to enable continued annual reductions in dolphin mortalities, must be essential elements of the final agreement. While our statement addresses improvements that are needed in the draft tuna-dolphin agreement, we also urge participating governments to ensure that the 2-6 February meeting is transparent, enabling Greenpeace and other NGO observers to attend and monitor those deliberations. The "closed door" approach used for most of the October meeting was completely unnecessary, and counterproductive to our common efforts to address tuna-dolphin issues effectively. Frankly speaking, none of the remaining, bracketed text merits secret, closed negotiations. We hope your government will help ensure that the meetings are open. If you have questions or need additional information, please contact Gerry Leape, in our Washington, D.C. offices (tel: 1.202.319.2401; fax: 1.202.462.4507; e-mail <gerry.leape@wdc.greenpeace.org>.) We look forward to attending the upcoming La Jolla intergovernmental meeting, and it is our fervent hope that an effective, environmentally responsible agreement will be finalized by February 6th.

8 Key Issues for the Intergovernmental Meeting

(2-6 February 1998, La Jolla, California)

Building on the 28-31 October 1997 negotiations, the upcoming intergovernmental meeting in La Jolla offers the opportunity for Governments to conclude an effective, environmentally responsible, tuna-dolphin agreement. Whether or not the conclusion of that meeting on February 6th will result in: 1) such a positive outcome, 2) an agreement that fails to meet commitments made under the La Jolla Agreement and Panama Declaration, or 3) a decision to convene yet another, third meeting to solve unresolved dif-

ferences, remains to be seen. In Greenpeace's view, with the necessary political will - reflecting a genuine commitment by all governments to honor previously stated commitments - the first outcome is by far the best option. It offers the possibility for governments and other interested parties, including Greenpeace, to celebrate an important step forward in the evolving national and international efforts "to progressively reducing dolphin mortality in the [EPO] fishery to levels approaching zero ... with a goal of eliminating dolphin mortality ..." (Panama Declaration, opening paragraph). Toward that end, Greenpeace offers the following comments and proposals on eight (8) issues that need to be addressed effectively. They are listed in the order in which they are addressed or referenced in the articles of the current draft agreement. We urge your government to incorporate these proposals into its negotiating positions for the February meeting:

1. **Geographical Area of Coverage**: With respect to Article III, if boundaries are to be included in the Agreement, they must be broad enough to cover any area where tuna and dolphins have been known to associate during the history of the fishery. If that area overlaps with the Western Pacific fishery, consultations need to be set up to establish an observer arrangement for Western Pacific tuna boats wishing to fish in that area.

2. **Further Reductions in Dolphin Mortalities**: Within Article V, as well as in the related provisions of Annex V and Annex VI, concrete proposals for both positive and negative incentives are needed to advance this core objective of La Jolla and Panama. Clearly, the overall dolphin mortality limit, set at 5,000 for 1998, must be progressively reduced. Consistent therewith, it is essential that the overall DML for each year be viewed as a limit to be avoided, rather than a goal to be reached. With that objective in mind, the following proposals represent an indicative, but by no means exhaustive, list of some concrete proposals that could be incorporated into the Articles and/or annexes of the Agreement:
   - prohibit large school sets, which are known to cause higher mortality;
   - prohibit vessels from having DMLs that, since 1992, have used or continue to use explosives;
   - recognize/reward captains who use extraordinary measures to eliminate dolphin mortality, such as releasing the net;
   - prohibit fishers from receiving DMLs who have not regularly attended training courses or have not used proper equipment;
   - grant higher DMLs to captains/vessels that have demonstrated a consistent and meaningful reduction in mortalities;
   - deny a country its total DML, or a reduced DML, if it consistently fails to enforce the Agreement with regards to its fleet;
   - require all vessels entering the fishery from other areas, including but not limited to those from the Western Pacific and those not intending to fish on dolphins, to carry all necessary dolphin safety equipment on board; and
   - in the event access fees are agreed, waive or reduce the charges for fishing boats that have low mortalities during the previous year.

3. **Individual Vessel DMLs**: In addition to incorporating as many of the above point 2 proposals as possible into Annex VI, related efforts to build flexibility or equity into the assignment of individual vessel DMLs need to contribute to further reductions in mortalities. The La Jolla Agreement, paragraph 3, provides an example of how to build in flexibility. A participating government may, after the initial DML assignments, adjust the DMLs of its qualified vessels either upward or downward, provided that no vessel is assigned an adjusted DML in excess of 15 percent above the original DML and the collective DMLs for the nation's fleet do not exceed that nation's collective DML prior to adjustment. Similarly, any new applicants (following initial assignments) for vessel DMLs should be limited to no more than 1/3rd of the initial full-year vessel assignments.

4. **Bycatch**: In Article VI of the current text (which will become Article V), numbered paragraph 1 needs to be modified by adding "avoiding, reducing" before "and minimizing" in order to ensure consistency with a) Article II's stated "Objectives" for the Agreement, and b) the Panama Declaration (second operative paragraph).

5. **On-Board Observer Program:** With respect to the Annex IV rules for the On-Board Observer Program called for in Article XIII, those rules should be more clearly set out with respect to observer qualifications, duties and other responsibilities, as well as the responsibilities of the Parties, vessel captains, and the Director. In addition, the Parties and vessel captain responsibilities should address the issue of observer harassment, intimidation or interference; and there needs to be an exception allowing use of alternative observer programs, subject to IATTC certification, for a vessel that fishes in the Area without setting on dolphins - although those vessels should nonetheless be required to maintain standardized data gathering techniques and to report all necessary information to the Program and IRP in a timely manner.

6. **Compliance**: While Article XVI, paragraph 2, contains new text that was agreed in an informal meeting after the close of the Oct. 31st intergovernmental meeting, in the spirit of transparency and enhanced understanding as to what might be considered an infraction and what penalties might be appropriate, we believe that the Annex XII listing of "Recommended Sanctions for Infractions" should be retained, including the distinction between major/serious infractions, versus those considered to be minor.

7. **Transparency**: With respect to the Article XVII-related guidelines and criteria set forth in Annex XIII, paragraph 5 offers two options - one Party, or a majority of the Parties - for Parties' to block an NGO observer applicant from participating in a meeting. We strongly believe that a simple majority is the appropriate standard, consistent with normal practice whereby rules of procedure in treaty regimes are subject to majority vote. Moreover, the IATTC practice, in general, has been referenced by governments and NGOs, alike, as a model for NGO participation elsewhere, yet the adoption of a rule enabling one Party, or even a minority of the Parties, to block NGO participation, would be a regressive step at a time when the trend is toward greater transparency.

8. **Signature**: With respect to the Article XXII draft formulations that indicate which States or regional economic integration organizations are eligible to sign the Agreement, this provision needs to be consistent with the requirements of the UN Agreement on Straddling Stocks and Highly Migratory Fish Stocks, in particular Articles 8 and 11. Rather than preclude States having a real interest in the fisheries, even though they may not be fishing there at present, as does the bracketed text, the better approach would be to determine the nature and extent of participatory rights for new members, consistent with Article 11.

For further information or questions concerning Greenpeace's views regarding the negotiations of a tuna-dolphin Agreement and the upcoming La Jolla meeting, please contact: Clif Curtis, Greenpeace International (tel: 1.202.319.2473; fax: 1.202.462.4507); Gerald Leape, Greenpeace, U.S.A. (tel: 1.202.319.2401; fax: 1.202.462.4507); Monique Mitastein, Greenpeace Mexico (tel: 52.5.536.4167; fax: 52.5.523.2314); or Lorenzo Cardenal, Greenpeace Central America (tel: 502.334.5467; fax: 502.360.1563).

Annex 6.

MEXICAN PROPOSAL CONCERNING PER-STOCK, PER-YEAR DOLPHIN MORTALITY CAPS

2. By December 1 of each year, after first establishing the area of distribution for each stock in the Agreement Area, the Director shall allocate per-stock dolphin mortality limits (DMLs) among the Parties, based upon the following criteria:

   a. For 1998 and 1999, in direct proportion to the historical level of fishing effort directed toward each stock, measured in terms of the number of sets made, by vessels operating under the jurisdiction of each Party during the period 1994 through 1996, inclusive, or in such other manner as the Meeting of the Parties might determine.

   b. For 2000 and beyond, the Meeting of the Parties may agree to adjust distribution criteria set forth in paragraph (a) in a manner that recognizes the distribution of individual stocks; is weighted towards historical effort as set forth in paragraph (a); takes into account demonstrated familiarity of the individual fleets with the fishing area in which a stock is distributed; considers in a substantial manner the demonstrated expertise of the individual fleets in the behavior of, and interaction with the particular stocks, as measured in terms of performance factors, which may include number of sets on such stock *versus* mortalities observed from those sets, number and proportion of failed sets on such stock, and tons of tuna landed per mortality observed for such stock.

   c. The Director may, should the Meeting of the Parties so instruct, withhold as much as 2 percent of per-stock DMLs from allocation under paragraph (a) or (b) in order to establish a per-stock Reserve DML Allocation (RDA). Such per-stock RDA shall be maintained by the Director for purposes of managing incidental interactions by the fleets operating in the Agreement Area with the individual stocks and, at the discretion of the Director, for allocation to the Parties consistent with rules established for overall RDA under Section I, paragraph 6, of Annex IV.

   d. No Party may allocate per-stock DMLs to a vessel of a country not eligible to become a signatory to this Agreement under Article XXIV, even if such vessels are operating under the jurisdiction of a Party.

Annex 7.

MEXICAN PROPOSAL CONCERNING DOLPHIN MORTALITY LIMITS (DMLs)

I. [Reference Points Within the Agreement Governing, Among Other Things, the Allocation of DMLs

1. As referenced in the preamble to this Agreement, the Parties are inspired by the principles contained in the Rio Declaration on Environment and Development of 1992, and by the wish to implement the principles and standards of the Code of Conduct for Responsible Fisheries; stress the political will of the international community to contribute to enhancing the effectiveness of fisheries conservation and management measures through the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; and committed to ensuring the sustainability of tuna stocks in the eastern Pacific Ocean and to progressively reduce the incidental dolphin mortalities in the tuna fishery of the eastern Pacific Ocean to levels approaching zero;

2. As referenced in Article II, among the objectives of this Agreement are to progressively reduce dolphin mortalities in the tuna purse-seine fishery in the Agreement Area to levels approaching zero, through the setting of annual limits, and to avoid, reduce and minimize the bycatch of juvenile tuna,

as well as the bycatch of non-target species, taking into consideration the interrelationship among species in the ecosystem;

3. As referenced in Article IV, the Parties agree to take measures to ensure the conservation of ecosystems and the sustainable use of living marine resources related to the tuna fishery conducted in the Agreement Area, and to establish measures in accordance with Article V to accomplish the same objective;

4. As referenced in Article VI, the Parties commit to develop and implement measures to ensure the long-term sustainability of living marine resources associated with the purse-seine tuna fishery in the Agreement Area including, inter alia, to develop and require the use of selective, environmentally safe and cost-effective fishing gear and techniques;

5. As referenced in Article VII, the Parties agree to adopt the necessary measures to ensure the implementation of and compliance with this Agreement;

6. As referenced in Article XVI, the Parties agree to ensure, with respect to their vessels and within maritime areas with respect to which they exercise sovereignty, sovereign rights or jurisdiction, effective compliance with the measures set forth in this Agreement or adopted pursuant thereto; and

7. As referenced in Article XX, the Parties agree to cooperate in deterring vessels flying the flags of States that are not Parties from carrying out activities that undermine the effectiveness of this Agreement.]

II. [Current and Historical Points of Reference Regarding the Carrying Capacity of the Fishery, and Governing the Distribution of DMLs.

1. The various fishing methods used to catch mature yellowfin tuna in the purse-seine fishery the eastern Pacific Ocean have varying impacts on the productivity of that fishery;

2. There has historically been a direct relationship between average size of tuna caught in that fishery and the productivity of that fishery;

3. The level of fishing effort within that fishery, as measured by the IATTC in terms of vessels fishing and harvest of tuna, had again increased at the time of this Agreement to levels worthy of concern, as reflected in further reductions in the average size of tuna caught, as well as the fact that the 1997 harvest of yellowfin tuna surpassed the lower "catch limits," and approached the upper "catch limits" established by the IATTC;

4. There has been a scientific finding that reductions in the average size of fish caught in that fishery correlate directly to consistent increases in the level of fishing effort using methods that include fish aggregating devices (FADs) in the years leading up to this Agreement, including an increase in such effort of nearly eight percent from 1996 to 1997; and

5. There is historical reason for concern that failing to control the mix of fishing effort in the fishery, through the use of DMLs and other management mechanisms, thereby allowing the health of the yellowfin tuna stocks to diminish to a point where overall fishing must be limited, creates a political and economic environment in which the ability of the Parties to collectively maintain a conservation and management program in the fishery, not only for tuna, but also for dolphins and other non-target species, is severely compromised.]

Annex 8.

STATEMENT BY THE UNITED STATES ON ASSOCIATED STOCKS

With respect to the Provisions of Article IV, paragraph 1, it is the view of the United States that maintaining or restoring the biomass of associated stocks at or above levels capable of producing maximum sustainable yield should be an important long-term goal, and as such should be addressed differently than the commitment to take measures designed to maintain or restore the biomass of harvested stocks at or above levels capable of producing maximum sustainable yield. It is the view of the United States that progress towards this goal be achieved through measures established pursuant to this Agreement, consistent with the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks.

Annex 9.

RESOLUTION

REGARDING THE AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

The 35th Intergovernmental Meeting, gathered in La Jolla, California, on February 2-7, 1998:

Recalling the Agreement for the Conservation of Dolphins, adopted during the Intergovernmental Meeting held in La Jolla, California, in June 1992;

Recalling also the Declaration of Panama, adopted on October 5, 1995:

1. *Adopts* the Agreement on the International Dolphin Conservation Program, attached as an Appendix to this Resolution;

2. *Invites* States that are eligible to become Parties to the Agreement to do so, and to implement the Agreement at the earliest opportunity;

3. *Asks* the IATTC to instruct its Director and his staff to perform the functions relating to implementation of the Agreement set forth in the Agreement, and such other functions as may be necessary to prepare for the entry into force of the Agreement.

Annex 10.

STATEMENT OF JAPAN ON THE AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Japan's participation in the adoption of the Agreement on the International Dolphin Conservation Program should not, in any respect, be interpreted in such a way as to bind Japan for its participation in the Program and affect its position on marine mammals including dolphin, and its views on future roles of IATTC to manage tuna resources in the Pacific Ocean *vis-à-vis* those of other international fishery conservation and management organizations which exist or which may be created in the future.

Annex 11.

STRENGTHENING AND REFORM OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION

The member countries of the La Jolla Agreement and signatories to the Panama Declaration, meeting in La Jolla, California on February 6th, 1998, on the occasion of the 35th Intergovernmental Meeting on the Conservation of Tunas and Dolphins in the Eastern Pacific Ocean:

Have agreed to ask the Inter-American Tropical Tuna Commission to establish a Working Group, open to members of the IATTC, States with coastlines bordering the Eastern Pacific Ocean, and States or regional economic integration organizations whose vessels fish for tuna in the Eastern Pacific Ocean.

The Working Group will have as a mandate:

- Conduct its work, beginning with what is established in the Panama Declaration and the Declaration on Strengthening the Objectives and Operation of the Convention establishing the Inter-American Tropical Tuna Commission, adopted in October 1995.

- Formulate appropriate recommendations on amendments and pertinent reforms to the Convention under which the Inter-American Tropical Tuna Commission was created.

Annex 12.

STATEMENT OF JAPAN ON THE RESOLUTION FOR STRENGTHENING AND REFORM OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION

Japan is neither a member country to the La Jolla Agreement nor a signatory to the Panama Declaration. Therefore, it is not in a position to formally respond to the subject Resolution. Nonetheless, it regrets that the draft resolution on the subject matter was tabled at the end of the 35th Intergovernmental Meeting without its delegation given an opportunity to consult with its home government.

On this occasion, Japan wishes to reserve its full right to state, at an IATTC Meeting, its view, including, on the question as to whether or not it is appropriate to set up a working group, the purpose of which is, *inter alia,* to recommend on amendments and reform to the IATTC Convention, prior to contracting governments thereto discussing fully the merits of the subject resolution.